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SIPDIS

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DEPT FOR EB/IPE CLACROSSE
DEPT PLEASE PASS TO USTRJCHOE-GROVES, DOC JBOGER
USDOC PLEASE PASS TO USPTO JURBAN, LOC STEPP

E.O. 12958: N/A
TAGS: [KIPR](#) [ETRD](#) [ECON](#) [BO](#)
SUBJECT: Belarus Special 301 Review

Refs: (A) 05 Minsk 922, (B) 05 Minsk 213, (C) State 14937

¶1. Summary and recommendation: Post once again recommends placement of Belarus on the watch list for 2006. Little has changed since Post's 2005 Special 301 input (ref B). Pirated optical media remains the norm, being readily available across the country, including in state-owned stores, and enforcement was minimal, although police conducted at least two successful raids. The GOB reluctantly provided Post with minimum information on IPR laws and enforcement. The GOB declined the offer to make its own Special 301 submission. End summary.

¶2. Post will attempt to answer the questions presented in ref C. However, the GOB's main IPR body, the National Center for Intellectual Property Rights (NCIPR), failed to answer most of Post's questions, and the Ministry of Interior would not provide any information on enforcement.

Optical Media Piracy

¶3. Optical media piracy remained the single largest type of IPR violation in Belarus during 2005. Pirated optical media is the norm in Belarus. Dozens of kiosks and markets in Minsk and elsewhere in the country openly sell pirated media (software, DVDs and CDs) at low prices. Pirated media was routinely sold in state-owned stores. Prices in Minsk for pirate DVD movies were stable through the year at around 9,000 rubles (4.50 USD). Many movies were available on DVD before they appeared in regional theaters. In some cases American movies were available on DVD in Belarus before being released in theaters in the U.S. A Russian-language version of Revenge of the Sith, for example, was available on DVD a week before its U.S. release. Some of these DVDs indicated they were "For Academy Award Consideration Only," while several others included French subtitles, indicating the movie was pirated in France.

¶4. A handful of vendors, mainly the Minsk chain Ministry of Sound, announced they were committed to selling only licensed media. While Post cannot comment whether they held to this, prices in these stores were certainly much higher than elsewhere in the country (for example, a new Madonna CD sells at the Ministry of Sound for BYR 55,00, or USD 25.60, compared to BYR 4,000/USD 1.86 at most other stores). Other stores and kiosks sold some DVDs at higher prices, but it is doubtful whether these media were legal. For example, Econoff noted a DVD for the movie Sahara was available in Minsk shortly after the movie was released in theaters in the U.S. When asked, the seller claimed the disc was more expensive (BYR 18,000, or USD 8.40) because, "it came from Ukraine." Most pirated optical media is believed to be imported from the Moscow region of Russia, with smaller amounts coming from Ukraine.

¶5. The availability of pirated software and music also persists

throughout Belarus. The latest Microsoft Windows and Office versions were available for an average of 5,000 rubles (2.50 USD) in Minsk markets. Other expensive commercial software, such as Autocad, was available for the same price. Similar prices prevailed for newly released music CD's. Regardless of content, music and software CDs generally sell for 5,000 rubles or less per disc.

¶16. The Belarusian Author's Association (BAA), formerly known as RUPIS, ostensibly exists to register copyrights and collect royalties (ref A). Nikolay Chisty, director of the BAA, told Econoff that there is no GOB agency charged with combating piracy of movies or books. BAA collects royalties for music played on the radio and in cafes and bars, but only after the company that owns the copyright signs an agreement with BAA. It plays no role in collecting royalties or protecting copyrights in the sale of CDs or software. BAA also collects royalties for cable television channels, but cannot transfer the money collected to foreign channels as most have not signed agreements with BAA.

Use/Procurement of Government Software

¶17. Post is not aware of any presidential edict or other regulation requiring government-purchased software to comply with international agreements. During the year Econoff spoke with representatives of domestic and foreign software companies who complained that the GOB generally will not pay for software licensing or technical support. They claim GOB officials do not understand why software is more expensive than hardware. Government officials have acknowledged that there is currently no law in Belarus recognizing software copyrights. Software companies hoping to prevent sales of pirated software in Belarus must make a specific application to stop the piracy with the government; Post has no evidence of any such application being made during the year.

TRIPS Compliance

¶18. When asked about TRIPS compliance, the NCIPR responded, "In the opinion of WIPO and WTO experts, the position of the Republic of Belarus in the sphere of protecting intellectual property is at the level of other governments who are WTO members and who are acceding to that organization." To support this probably exaggerated claim, NCIPR stated that a Commission for IPR Protection and Counter-Violations works under the Council of Ministers. This commission, along with NCIPR, BAA, and local governments, "holds events aimed at ensuring compliance with the law in the sphere of IPR."

¶19. On August 5, the Council of Ministers passed Decree 871, "Confirming the Position on Interaction of Republican Organs of State Governance and Law Enforcement in the Realm of Intellectual Property," (the decree can be found, in Russian at http://pravo.by/webnpa/text_txt.asp?RN=C20500 871). This decree calls for various government bodies to work together to enforce legislation on IPR protection, and specifically calls for joint action by the GOB on studying international IPR norms, conducting joint events and seminars, exchanging information and analysis, and carrying out joint checks for IPR violations. The decree also spells out the IPR responsibilities for the Ministries of Architecture and Construction; Internal Affairs; Health; Information; Culture; Education; Industry; Communications; Agriculture; Trade; and Economy; as well as the State Committees on Science and Technology; Customs; Earth Resources, Geodesics and Cartography; Standards and Certifications; and law enforcement bodies. Post knows of no other new IPR-related legislation during the year.

¶10. The NCIPR failed to provide any further information to the questions in ref C, para 16 C, TRIPS Compliance.

Enforcement

¶11. The NCIPR claims that Belarusian law enforcement conducted a

number of checks for IPR compliance in 2005, finding evidence of 42 crimes, "stopping" 501 administrative violations, seizing 185,000 counterfeited products and the equipment for their manufacture. NCIPR also claimed: in 2005 law enforcement conducted 695 investigations, looking at 152,497 items looking for signs of counterfeiting; in 2004-2005 the State Standards body conducted 144 checks and found 135 violations of optical media worth BYR 113 million (USD 52,500); tax authorities conducted 40 checks in 2005, finding 23 violations, assessing fines for BYR 6.2 million (USD 2,800), and seizing BYR 4.8 million (USD 2,200) in goods. Despite these statistics, pirated optical media remain the norm on sale across the country. Unlike in previous years, no GOB official was known to publicly state the government would not enforce IPR laws.

¶12. In August the Ministry of Interior announced it raided two Minsk companies involved in the illegal copying of compact discs. The MOI claims it seized 108,000 CDs, 57 CD-writers, and a packaging machine (ref A). On February 14, the MOI announced it raided a Minsk wholesaler and seized 33,000 pirated DVDs and CDs. The MOI claimed this wholesaler had cost legitimate copyright holders over one billion BYR (USD 465,000) in damages. Authorities have brought criminal charges of illegal distribution of counterfeit goods against the owner. In both cases the MOI refused to provide Post with additional details. Post knows of no other IPR enforcement actions.

¶13. No official information on criminal proceedings or disposition of equipment resulting from the closure of the Brest Armita CD plant in August 2002 was provided during 2004. Post has heard, but cannot confirm, that the equipment confiscated from Armita was transferred to Russia in 2003.

Treaties

¶14. According to the NCIPR, Belarus is a party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. NCIPR also said Belarus is a party to the Berne Convention for the Protection of Literary and Artistic Works, as well as a number of IPR agreements under the framework of the Commonwealth of Independent States. NCIPR said nothing about implementation of these agreements.

Training

¶15. Answering the question as to what sort of training would be useful, the NCIPR replied, "The U.S. government could provide skilled help in training specialists of the Republic of Belarus in combating the circulation of counterfeit goods, in particular manufacturing with copyright violations."

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